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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,911	08/18/2003	Michael C. Jeziak	1097-014	3192

25215 7590 06/21/2005

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EXAMINER

LEWIS, KIM M

ART UNIT PAPER NUMBER

3743

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/642,911	Applicant(s) JEZIAK, MICHAEL C.	
	Examiner Kim M. Lewis	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> |

DETAILED ACTION

Response to Amendment

1. The amendment filed on 3/31/05 has been received and made of record. As requested the specification has been amended, claims 1-20 have been cancelled, and claims 21-33 have been added.

Oath/Declaration

2. The oath or declaration filed 3/31/05 has been received and made of record.

Claim Objections

3. Claim 31 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. More specifically, claim 31 depends from itself and therefore fails to further limit a previous claim.
4. Claim 30 is objected to because of the following informalities: Claim 30, line 2, "applicationing" should read --application--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 24 and 33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As to claims 24 and 33, the applicant introduces the phrase "substantially transparent" by the amendment filed 3/31/05. There is no support for this phrase in the original specification.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,570,050 ("Augustine et al.").

A "wound" as defined by Webster's II New Riverside University Dictionary is "1. [a]n injury, esp. one in which the skin or other external organic surface is torn, pierced,

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cut, or otherwise broken.” Since the applicant on page 1, line 13, recites “...body art (such as a tattoo, piercing, scarring, insertion of foreign objects, removal of skin, otherwise combinations thereof), the examiner interprets a wound, which as defined by Webster is pierced skin, is body art. Given this interpretation of body art, applicant’s invention is anticipated as discussed below.

With respect to claims 21 and 22, Augustine et al. disclose a bandage for autolytic wound debridement. As can be seen from Figs. 1 and 1a, Augustine et al. disclose a cover (bandage 10 or Fig. 3) defined by: a peripheral portion having a mating surface for placement on a skin surface, wherein the mating surface is shaped to surround newly applied body art on the skin surface, a central portion joining the peripheral portion, wherein the central portion has an outer surface and an interior recessed surface; and a retention member (adhesive 26 or 328) adapted to affix the cover to the skin, wherein placement and affixing of the cover around and over the newly applied body art creates a gapped region between the central portion and the newly applied body art and substantially prevents destructive contact to the same (Fig. 1A, 1B, and Fig. 3). Mere use of this bandage inherently anticipates applicant’s method for protecting newly applied body art on a skin surface.

As regards claim 23, note col. 8, lines 13-17, which disclose the use of polypropylene.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 24-27, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine et al.

As regards claim 24, Augustine et al. disclose various embodiments one of which includes an opaque cover (Fig. 1A), which will substantially shield wound (body art) from sunlight exposure. Another embodiment, such as the embodiment shown in Fig. 3, discloses a substantially transparent cover which allows viewing of the wound (body art) without removal of the bandage. Augustine et al. fail to teach that the cover is substantially transparent and substantially shields the body art from sunlight exposure.

In light of the two extremes, an opaque embodiment and a transparent embodiment, one having ordinary skill in the art at the time of invention would have been motivated to create an embodiment wherein the cover is translucent (substantially

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transparent) in order to somewhat see the wound, yet not totally expose the wound to viewing.

Regarding claims 25 and 32, again note the adhesive (26 or 328).

As regards claim 26, Augustine et al. disclose at col. 5, lines 3-5, that barrier (26) is fluid-impermeable, thereby further acting to create a substantially waterproof environment.

As regards claim 27, note col. 12, lines 50-54, which discloses the addition of treatment material such medicaments.

Regarding claim 33, note the rejection of claims 23 and 24 above.

12. Claims 28-30 rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine et al. in view of U.S. Patent No. 6,274,787 ("Downing").

Regarding claims 28 and 29, Augustine et al. fail to teach the method of claims 25, wherein the protecting step is accomplished with a cover including at least one perforation. However, Downing discloses a span-over-the-wound bandage comprising a cover having a perforation for ventilation. In view of Downing, it would have been obvious to one having ordinary skill in the art at the time of invention to include a perforation in the cover of the bandage of Augustine et al. in order to ventilate the wound.

Regarding claim 30, the perforation is capable of permitting the application of medicine.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

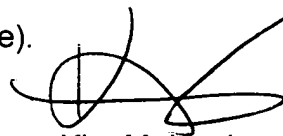
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571)272-4796. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Kim M. Lewis
Primary Examiner
Art Unit 3743

kml
June 15, 2005